

Appendix 14

**Expert Report on Behalf of MALDEF
LUPE, et al v Texas, Scott, et al
Case No. 5:21-cv-00844-XR**

SB1

By

Henry Flores, PhD

Introduction

1. My name is Henry Flores and I am over 18 years of age. I have never been convicted of a crime and am fully competent to express the below opinions. The following observations and opinions are within my personal and professional knowledge and are accurate and correct.
2. Currently I am a Scholar in Residence in the Department of Political Science at the University of Houston in Houston, Texas. Additionally, I am the Distinguished University Research Professor of Political Science Emeritus at St. Mary's University in San Antonio, Texas where I taught for thirty-five years. During my tenure at St. Mary's, I was Dean of the Graduate School for nine years, Chair of the Department of Political Science twice, Director of the Graduate Program in Public Administration three times and Director of the Graduate Political Science Program once. My résumé is attached as Appendix A.
3. I was awarded my PhD from the University of California at Santa Barbara in December 1981 with examination fields in American Politics (Urban and Latino), Public Administration (Organizational and Decision Theories), Political Philosophy (Conceptual Analysis and Structural Theories) and Multivariate Statistical Analyses. I have published numerous books, scholarly articles, encyclopedia entries and invited chapters in books as well as presented learned papers on racially polarized voting, Latino and Urban Politics, racial intent, structural discrimination, and decision theory. Throughout my publications I have examined the connections between race and politics in many areas of public policy including voting, gun

66.73%).¹⁹ 21. In addition, driven in part by concerns over COVID-19 and college students voting from outside their counties, Texans cast 1 million absentee ballots before Election Day in 2020, up from less than 500,000 in 2016.²⁰

20. "There is no evidence that voter fraud affected the outcome of the 2020 General Election. In March 2021, Keith Ingram, state director of elections, told Texas legislators: "In spite of all the circumstances, Texas had an election that was smooth and secure[.] Texans can be justifiably proud of the hard work and creativity shown by local county elections officials."²¹

21. Nevertheless, following the 2020 election, legislative leadership introduced and pushed for a new bill they claimed was necessary to ensure election integrity.²² Senator Hughes, the sponsor of SB 1 and similar legislation earlier in 2021, explicitly linked increased voter turnout with the need for SB 1: "And back in 2012, 59 percent of registered voters actually voted. Last year, 66 percent of registered voters voted. So total rates are up, participation is up, and that's good. We are for more participation. When more voters vote, it's better for everyone. Of course, many say there's no fraud, and that's just demonstrably false. These are not subjective questions. These hard numbers. This is reality. The AG's office has over 500 counts pending in court against 43 defendants. Since 2005, they've prosecuted over a thousand counts, and that's just the attorney general's office. It doesn't count those being handled by local officials only. These cases are resource-intensive, they're geographically diverse, and they're increasingly complicated. And so for all those reasons, we recognize this is something that must be addressed."²³

22. The specific sequence of events leading up to the challenged decision also includes efforts before the second special session to enact bills purporting to fight voter fraud.

¹⁹ Texas Secretary of State, "Election Information and Turnout Data," available at <https://www.sos.state.tx.us/elections/historical/index.shtml>

²⁰ Texas Tribune, "Four years ago, Texas Republicans were the most likely to use mail-in voting. Here's how that flipped in the last election," available at <https://www.texastribune.org/2021/01/11/texas-mail-in-ballot-absentee-democrats-republicans/>

²¹ Houston Chronicle, "Did a 'smooth and secure' 2020 election cost the Texas secretary of state her job?," May 21, 2021. Available at <https://www.houstonchronicle.com/politics/texas/article/Texas-Secretary-of-State-Ruth-Hughs-resigns-under-16195586.php>

²² Texas State Senate Journal. August 9, 2021. p. 5

²³ Texas State Senate Journal. August 9, 2021. pp. 6-7.

The House debated SB1 on August 26, 2021, and adopted seventeen amendments to the bill. The House passed the bill on August 27, 2021.

23. The next *Arlington Heights Factor* states “**Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.**” Committee chairmen kept public hearings to a minimum and limited speakers to two minutes of testimony, including testimony from election and voting experts. Given the complexity of some of SB 1’s provisions, two-minutes is hardly enough time to present a cogent, logical, and clear argument on any, let alone more than one, amendment. As a result, committees did not take detailed expert testimony, and community input was similarly limited. The actual deliberations on this complex legislation, possessing many complicated and, in some cases, vague provisions, were accomplished in one day in each chamber yet there were 80 proposed amendments to the bill. All of these procedural departures suggest that the leadership rushed the legislation through and employed a process designed not to include careful deliberation.

24. Many attempts to amend SB 1 by either state senators or house members during floor deliberations were not adopted by both chambers. Several senators including Royce West (African American), Judith Zafarini (Latina), and Juan Hinojosa (Latino) noted in their comments the lack of openness on the part of the decision makers.²⁴

- r. Senators offered 12 amendments to the bill during floor debate, including a rather extensive submission of what was designated the “Barbara Jordan Act,” were submitted for consideration. Of the 12 submitted amendments, 7 were approved of which five were by *viva voce*.²⁵ All amendments that were not approved were submitted by Latino and African American senators.²⁶

²⁴ Senate Journal, April 1, 2021.

²⁵ Ibid. August 11, 2021.

²⁶ Texas Legislature Online. History of SB 1.

- s. Senator Zafarini pointed out that SB 1 reduced the number of early voting hours in the four largest counties in the state where approximately 30% of all Latino, 30% of all African American, and 30% of all Asian American voters resided. These data led Senator Zafarini to declare that SB 1 was specifically designed to suppress the minority vote in the state. Senator Zafarini also pointed out that although preventing voter fraud was one of the goals of SB 1 the level of fraud in the state is minuscule with only 44 cases out of 11.2 million votes cast being investigated at that time (only .000004 percent of all ballots cast suspected of being fraudulent). Apparently there were so few cases of voter fraud that the Attorney General was forced to close his Voter Fraud Unit for lack of work.²⁷
- t. Senator Hinojosa noted that the elimination of drive-through and 24-hour voting were designed to make voting more difficult for Latino and Black voters who worked long hours, held two or more jobs, or worked odd shifts to vote.²⁸ These voters generally came from low-income areas in urban areas. He also cited research by Schaufnagel, Pomarck and Li who created a Cost of Voting Index noting that Texas had fallen from having the 17th most open election system to having the most stringent and closed in the United States since 2016.²⁹
- u. The Senate began debate on SB 1 August 11, 2021 and engrossed it the following day, August 12, 2021. During that short timeframe the twelve amendments were debated and either approved or rejected.³⁰
- v. Senate Bill 1 was received by the House on August 19th and immediately referred to the Constitutional Rights and Remedies Committee. The House Committee heard SB 1 on August 23rd. That same day a committee substitute was introduced and voted out by the Committee. The House

²⁷ Taylor Goldstein. December 17, 2021. “Texas Vote Fraud Unit Closed Three Cases in 2021. GOP Lawmakers Still Boosted its Budget.” *Houston Chronicle*. Downloaded February 8, 2022.

²⁸ Rick Casey. February 8, 2022. “The Real Fraud Behind the New Texas ‘Election Integrity’ Law.” *San Antonio Report*. Downloaded February 9, 2022.

²⁹ “Cost of Voting in the United States: 2020.” December, 2020. *Election Law Journal: Rules, Politics, and Policy*. <http://doi.org/10.1089/elj.2020.0666>. Downloaded February 8, 2020.

³⁰ Texas State Senate Journal. August 11, 2021.

started taking testimony on the elections bill earlier than nearly 2:00 in the morning during the first called special session. They would not have voted immediately after taking hours upon hours of public testimony, denying members the time to reflect on what they had heard. The quality of our policy reflects the quality of our process. In short, if the majority cared about the process, they would have gone to every length to ensure transparency and good faith engagement with the public and with their colleagues in the minority party. They opted instead for a hasty, sloppy, self-serving process that has left the People's House in a shambles.”³⁹

27. Another important substantive departure is the fact that SB 1 does not match its stated intent. The supporters of SB 1 stated that it was required to prevent widespread voter fraud; however there is no evidence of widespread voter fraud and only relatively few isolated incidents of wrongdoing. Although supporters claim that SB 1's restrictions were required to ensure the security of the ballot, the stringent nature of the supposed safeguards actually serve to diminish the ability to vote of Latinos, those with less education, the elderly and disabled. In fact, the majority rejected proposed amendments to enhance access to voting.⁴⁰

- w. Several Democratic Senators inserted comments in the record following floor debate, speaking to the disconnect between the stated intent of SB 1 and the language in various provisions of the bill that appeared to deviate from the intent. Senator Zafarini argued that Senator Hughes, the bill's sponsor, stated that SB 1 was designed to “make it easier to vote and harder to cheat” but that the provisions of the bill did just the opposite by creating more complex and stringent requirements to vote by mail and at the polls.⁴¹
- x. With respect to “the legislative or administrative history” of SB 1, the legislative record reveals that the leadership acted contrary to the evidence, the recommendations of voting rights experts, the recommendation of the vast majority of witnesses who testified on the bill, and the urging of minority legislators. One of the most important issues was pointed out by Senator Zafarini, among others, that the minuscule level of voter fraud in Texas did not warrant tightening the voting laws of the state. This is a law

³⁹ Texas House Journal. August 19, 2021.

⁴⁰ Senate Journal. August 26, 2021. Citing Representatives Dutton, Cole, and Rose.

⁴¹ Ibid. August 11, 2021.

that is not necessary if there are relatively few attempts to subvert the election process subsequently declared safe and secure by the Secretary of the State's office.⁴² The goals of the bill are to prevent fraud and ensure the integrity of the ballot but there is little evidence of this occurring. As a matter of course, the 2020 election was deemed the most secure in the nation's history.⁴³ The Brennan Center report cites the FBI, Homeland Security and Department of Justice, three federal judges, one state judge, 59 election security and computer scientists, and 39 Republican Secretary of States as the source for the conclusion as to the security of the 2020 election. The legislative history suggests that this law was not written to protect ballot security or its integrity but for some other reason. If one mines deeper into the various barriers created within SB 1, one discovers that the most affected communities are those of color, Latinos, Blacks, and Asian Americans together with the elderly and the disabled.

- y. The legislature refused, on three occasions, to accept amendments that included making increasing turnout a goal of SB 1. Leaving one to conclude that the legislature did not want very many people to vote but to suppress the vote instead. The sponsors of SB 1 refused to accept or consider amendments that would have increased voter turnout. Apparently, increasing voter turnout would make voting less secure in the eyes of the bill sponsors.

Decisional Theory

In enacting SB 1, the Legislature violated some of the most fundamental tenets of decisional theory. A good decision requires that the end policy is designed to meet the stated goals of the

⁴² According to some news pundits, Hughes was forced to resign because her nomination was not taken p by the Senate Nominations Committee after she declared the 2021 General Elections “safe and secure” contradicting the Republican Party’s state leadership. Charles Kuffner. October 30, 2021. “There is no Reason to Trust John Scott.” *Off the Cuff*. Downloaded February 19, 2022.

⁴³ “It’s Official: The Election Was Secure.” December 11, 2020. *Brennan Center for Justice*.